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In The

Supreme Court of the United States

October Term, 1979

No. 79-1637

J. P. STEVENS & CO., INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

SUPPLEMENTAL BRIEF FOR J. P. STEVENS & CO., INC.

J. FRANK OGLETREE, JR.
HOMER L. DEAKINS, JR.
Attorneys for Petitioner

Of Counsel:

OGLETREE, DEAKINS, NASH, SMOAK, STEWART AND EDWARDS
3920 First National Bank Tower
Atlanta, Georgia 30383
(404) 588-1300

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

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J. P. Stevens & Co., Inc., the petitioner, files this supplemental brief for the purpose of calling attention to a new case not available at the time of its last filing.

In *Florida Steel Corp. v. NLRB*, 620 F.2d 79 (5th Cir. 1980), the United States Court of Appeals for the Fifth Circuit recently issued an opinion denying enforcement of Board-ordered remedies similar to those ordered in the instant case. Specifically, the Board ordered that in the event it scheduled a representation election at any of the employer's plants during a two year period, union representatives would be afforded the right to deliver a 30 minute speech to employees on company

property during working time, and would be granted equal time to respond to any address on the question of union representation made by employer representatives to employees on company property. 620 F.2d at 81.[1] The Board imposed these extraordinary remedies, on the grounds that "[t]he instant violation is yet another step in what can only be characterized as a corporate campaign to chill employee organizational activity throughout its facilities through unlawful conduct . . . [and] . . . because of [the employer's] history of interference with employee rights during organizational campaigns and even after employees have selected a union to represent them. . . ." 242 NLRB No. 195, 101 LRRM 1370, 1371.[2]

The court acknowledged that the Board "has broad discretion to determine what curative measures are needed with respect to a particular violation . . . and . . . may properly consider past conduct of the parties which may affect the scope of an effective remedy." 620 F.2d at 82. However, the court rejected the imposition of the extraordinary access remedies at the employer's nonunion plants[3] for the following cogent reasons:

> The essence of the Board's order *must*, . . . if it is to be remedial, *be based upon the conduct found by the*

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1. On a previous occasion, the Fifth Circuit struck down other remedies which involved the entry of union representatives onto the company property of Florida Steel Corporation. *See Florida Steel Corp. v. NLRB*, 587 F.2d 735 (5th Cir. 1979).

2. The litigation history of Florida Steel Corporation is quite similar to that of the employer in the instant case. Florida Steel has been found guilty of unfair labor practices by the Board on 17 separate occasions since 1974, with enforcement ordered by the court in 10 of the 12 cases reviewed on appeal. *Florida Steel Corp. v. NLRB*, 620 F.2d at 82, note 5.

3. The court held that the imposition of the remedies at the employer's two union plants was justified, "albeit tenuously, as a means of deterring any repetition of the conduct before the Board and for preventing other efforts by the company to impair the effectiveness of the union as a bargaining representative." 620 F.2d at 83.

> *Board to violate the Act in the current proceedings.* It must be remembered that the Board is not empowered to monitor on a continuing basis the activities of a company or union found to have committed one or more unfair labor practices or to impose on a periodic basis additional requirements because of a past violation (Emphasis added). 620 F.2d at 83.

While the court expressly pretermitted the question of whether the Board order in the instant case could be distinguished on its facts, 620 F.2d at 83, it is clear that it cannot. As the Board order acknowledges, the extraordinary remedies in the instant case were imposed because of the petitioner's "long history of violations of employee rights" (A-3), as was the case in *Florida Steel.* The minor violations found to exist in the instant case, *i.e.*, two acts of interrogation and one statement that breaks would be handled differently if a union came in, made by two minor supervisors at one plant in Georgia, cannot be viewed as anything other than minor, isolated violations. *See J. P. Stevens & Co., Inc.*, 243 NLRB No. 159 (1979) (where four acts of coercion and restraint at one plant were viewed as "limited violations of a less than severe nature"). Therefore, to utilize such violations as a vehicle for imposing corporatewide access to company property for union organizers at the employer's 80 other plants in New England and other southeastern states is patently punitive.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK,
STEWART AND EDWARDS

By: J. FRANK OGLETREE, JR.
HOMER L. DEAKINS, JR.
Attorneys for Petitioner

3920 First National Bank Tower
Atlanta, Georgia 30383
(404) 588-1300